IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

LAND ACQUISITION REFERENCE NO.16 OF 1989
IN
CASE NO.LAQ/SR/465

Special Land Acquisition Officer(2))
Bombay & Bombay Suburban District,)
Old Custom House, 4th Floor,)
Bombay-23)

And

1) Shri Vithaldas Laxmidas Bhimji)

2) Smt.Manubai Laxmidas Bhimji)
Trustees of Bai Mamubai Trust,)
11, Neemchhaya, Joshi Lane,)
Mahatma Gandhi Road,)
Ghatkopar(East), Bombay-400 077)..Claimants

And

The Municipal Corporation of Greater)
Mumbai.)..Acq.body.

Mr.P.G.Sawant for SLAO.

Mr.P.G.Lad alongwith Mr.Pimple for acquiring body.

Mr.John Paul alongwith Mr.Nikhil Dharod i/by Pravin mehta & Mithi for claimants.

Coram : R.S.Mohite,J

Date : 6.12.2006.

JUDGMENT

1. This reference has been made by the Special Land Acquisition Officer, Bombay and Bombay Suburban district under Section 18 of the Land Acquisition Act 1894 on an application made by the claimants who are the trustees of trust known as "Bai Mamubai Trust". The acquired property were 7 tenented structures bearing CTS numbers and areas as under :-

CTS Nos.	Area in Sq.metrs.
5441 part	0.70
5442 part	0.70
5443 part	0.70
5444 part	2.50
5445 part	5.00
5446	5.20
5447	4.20
5450	3.40
	22.40

2. The said property was acquired by the acquiring body i.e. Bombay Municipal Corporation for the purposes of road widening of M.G.road, Ghatkopar. Without initiating any particular procedure in law, a request was made to the trust to hand over the possession of the 7 shops together with the tenancy rights and it is also an admitted position that possession of the 7 shops was handed over to the Bombay Municipal Corporation on 24.12.1973 for which, Bombay Municipal Corporation issued a charge receipt. Unfortunately, this is a case where no documentary evidence has been proved though oral evidence was led and therefore, that charge receipt is not before the Court as a proved document.

3. It is the case of the claimants that after

possession was taken over on 24.12.1973, 3 of the 7 shops were demolished and therefore, the land under the said shops became open vacant land whereas 4 other shops were left standing though the Bombay Municipal Corporation had been given possession on the footing that they would demolish all the 7 tenanted structures.

4. When this was the position, on 19.8.1983 a declaration under Section 126(4) of Maharashtra Regional Town Planning Act read with Section 6 of the Land Acquisition Act came to be published in the Gazattee and in pursuance of the consequent acquisition proceedings, in due course, an award dated 22.9.1986 came to be passed by the Special Land Acquisition Officer (2) Bombay and Bombay Suburban district. Under the said award, compensation was awarded to the present claimants in respect of the aforesaid land of area 22.40 square meters at the rate of Rs.150 per square meter. 30% solatium and 12% component value for the period 19.12.1983 till the date of the award were granted. Demolition value was also granted and accordingly, compensation was made payable to the claimants. The total amount awarded was Rs.5722.20/-.

5. Being dis-satisfied with the amount which was awarded, the claimants filed an application under Section 18 on 9.2.1987 and this resulted in the Special Land Acquisition officer filing the present reference in this Court on 14.6.1989.

6. I heard both the sides. Oral evidence was led in this matter. On behalf of the claimants the first witness examined was Mr.Vithaldas Laxmidas Bhimji who was a trustee. The other witnesses examined by the claimants were Mr.Mekhji Shavji Varia and Mr.Umesh G.Khetia to prove 2 instances of sale and Mr.Ashok Vaidya who was the valuer. Though the oral evidence of all these witnesses is on record, I find therefrom that though a list of documents had been filed in the case, not a single document has been got proved through any of the witnesses. Even the valuation report has not been specifically proved through the valuer. None of the documents annexed to the list of documents is proved as required by law.

7. It appears that of the sale instances though several instances of sale of tenanted premises were available and relied upon by the acquiring body prior to the passing of the award, none of those instances pertaining to transfer of tenanted premises were relied upon when evidence was led in this case. In fact, the valuer’s evidence indicates that they were discarded because they were inadequate and one of the reason specified by him as the instances related to tenanted premises. Both the instances which were in fact relied upon by the claimants in this case pertained to sale of shops in the immediate area of the acquired premises. Both the shops admittedly were not tenanted and were of

the ownership right of the vendor. The method which has been adopted in this case by the valuer Ashok Vaidya is that he has determined the value of the ownership rights in the 2 instance shops and has arrived at the cost of the land by deducting the cost of the structure after adjusting the same for depreciation. Having arrived at the cost of the land it is the claimants' case that since Bombay Municipal Corporation had taken over the tenanted premises with the existing tenants thereon on the understanding that as per their policy they were to shift these tenants to the nearby market and then demolish all the tenanted structures which were acquired, the claimants would be entitled to the cost of the vacant land. In this context, strong reliance was placed upon Section 23(1)(i) of the Land Acquisition Act which lays down that in determining the amount of compensation, the Court shall take into consideration the market value of the land at the date of the publication of the notification under Section 4 sub-section 1.

8. In my view, this provision is not applicable at all because there was no question of any notification under Section 4 of the Land Acquisition Act. The present acquisition being under Section 126 of the Maharashtra Regional Town Planning Act which provides that the acquisition process will commence with a Section 6 declaration under the Land Acquisition Act 1894. There is however, a similar provision under Section 126 and

since the notification under consideration was issued under Section 126(4) the market value of the land was required to be the market value as on the date of declaration in the official Gazatte made for acquiring the land afresh.

9. The contention however, is that the word land must mean the land as it stood on the date of the notification under Section 126(4) and on this date 3 of the tenanted shops were demolished and the land under them was rendered vacant and though 4 of the shops were still standing, in view of the policy and a written assurance given by the Bombay Municipal Corporation that they would be demolished, they must be deemed to be liable for demolition and in such circumstances, the claimants would be entitled to the value of open vacant land.

10. I am unable to accept this basic premise. In short, what the claimant is claiming is that though he handed over possession of property which was encumbered by tenants admittedly protected by the Bombay Rent Act and who could not have been evicted except by following the procedure laid down by Bombay Rent Act, he should get the price of unencumbered open piece of land on the basis of the argument and reasoning mentioned in the contention of the claimant as above.

11. In my view, the claimant having voluntarily surrendered the possession of the 7 tenanted shops and

the possession of which was taken over by the Bombay Municipal Corporation in view of the voluntarily surrender and not under any specific provision of the Land Acquisition Act or Maharashtra Regional Town Planning Act, the only amount that can be claimed by the claimant is in lieu of his ownership rights in the tenanted property. It may be that after handing over the possession the value of property might rise till the date of the actual notification under Section 126(4) of the Maharashtra Regional Town Planning Act read with Section 6 of the Land Acquisition Act. If there was any such rise, the claimant would be entitled to claim such enhanced value. This however, is totally different from saying that he would also be entitled the change in the nature of "land" made by the acquiring body after he surrendered possession and before publication of the notification under Section 126(4) of the Maharashtra Regional Town Planning Act read with Section 6 of the Land Acquisition Act.

12. A glance at the evidence of Mr.Ashok Vaidya the valuer who prepared the valuation report at the behest of the claimant indicates that he did not make any valuation of the tenanted property as was belonging to the claimant. He also did not make any attempt to arrive at the value of the tenanted properties by determining gross rent, deducting the outgoings, arriving at the nett rent and capitalising the income which was being derived by the trust. The

cross-examination of the trustee contains a categorical admission that the rent of the tenanted premises was the only income of the trust was getting from the acquired property.

13. Though there were instances of sale of tenanted premises the claimant did not rely upon them and the valuer did not take them into consideration.

14. In my view, none of the instances which have been sought to be relied upon by the claimants have any relevance for the purposes of determining the market value of the tenanted premises acquired and thus the entire basis of the claimant claim is on erroneous footing that he can claim the value of the open land below the tenanted premises. The acceptance of any such contention can have dangerous consequence. To give an example, if after taking possession the acquired body has constructed a premises on the land then on the basis of such an argument, the claimant would be entitled to the value of the structure not constructed by him but erected by acquiring body at its cost if such structure stood on the date of publication of the 126(4) notification.

15. The claimants have not led any evidence to indicate as to what was the rent that was payable or what was the damages which were sufferred by them by way of loss of rent or otherwise. They might have been

entitled to such damages but in the absence of evidence in that regard, no benefit can be given to them.

16. In the nett result, the reference must fail and stands dismissed.

(R.S.Mohite,J)